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ABSTRACT

The primary focus of this module, one of five to be integrated into an 11th grade American history course, is on the question: Is law necessary? Understandings, or objectives, deal with the use of the law as a necessary means of social control over antisocial behavior and dispute resolution; treat the social guidance function of law; examine the use of law to provide necessary social benefits through public and private means; and give students an opportunity to philosophize about the theoretical neccessity for law. In the module, an explanation for the teacher follows the statement of each understanding. Related objective and general questions are listed. Most of the double-columed pages detail descriptions of classroom strategies with notes to explain a strategy's validity and to indicate points to observe while using the strategies. Resources used with these strategies are grouped together and are cross-reference by case name, statute, and by page in a detailed description of the teaching procedure. A resource listing for each case includes a description or excerpt from the decision. A bibliography includes written source materials as well as films, filmstrips, and simulations. A teacher's guide is SO 007 674. (Author/KSM)

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TEACHING ABOUT BASIC LEGAL CONCEPTS IN THE SENIOR HIGH SCHOOL

MODULE I-THE SYSTEM: WHO NEEDS IT?

SO 007 673

The University of the State of New York/The State Education Department
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MODULE I - THE SYSTEM: WHO NEEDS IT?

1. *The Main Focus.*

The primary focus of this module is on the question: Is law necessary? Today there is evidence of considerable contempt for the law and legal system. The law is an instrument of social control that is operated by fallible human beings. Perhaps it should not be surprising that law is therefore neither omnipotent nor perfect. But some people today are so impatient with the legal system, they appear willing to simply get rid of it. Such attitudes inspire the equally extreme reaction to respect all law without question. With such deep and varied concern with law, it seems appropriate to begin a study of law by stepping back from the rhetoric to ask the fundamental question: Is law necessary?

2. *Why This Focus?*

The primary reason for such a focus is discussed above. The question, "Is law necessary?" is important because the social necessity of law is being directly challenged in our society today. Second, in considering this question, students can begin to develop certain concepts about the nature of law. Given the importance of the legal structure of our society, such an understanding of the nature of our legal system seems a necessary part of our social studies program.

3. *Outline of the Teaching Scheme.*

This module on the necessary function of law includes six understandings. The first two understandings deal with the use of law as a necessary means of social control over antisocial behavior and dispute resolution. The third understanding treats the social guidance function of law. The fourth and fifth understandings examine the use of law to provide necessary social benefits through public and private means. In the final understanding, students are given an opportunity to philosophize about the theoretical necessity for law.

SUMMARY OF UNDERSTANDINGS

I. LAW SERVES AS A NECESSARY MEANS OF SOCIAL CONTROL OVER ANTI-SOCIAL BEHAVIOR.

II. LAW SERVES AS A NECESSARY MEANS OF PROVIDING ACCEPTED PROCESSES FOR DISPUTE RESOLUTION TO FURTHER EFFECTIVE SOCIAL CONTROL.

III. LAW SERVES AS A NECESSARY MEANS OF PROVIDING SOCIAL GUIDANCE IN DAILY AFFAIRS.

IV. LAW IS THE ONLY MEANS OF PROVIDING FOR SOCIAL BENEFITS THROUGH PUBLIC ACTION.

V. LAW SERVES AS A NECESSARY MEANS OF SUPPORT FOR PROVIDING FOR SOCIAL BENEFITS THROUGH PRIVATE ACTION.

VI. PHILOSOPHICAL DIFFERENCES ABOUT THE NATURE OF MAN AND OF HIS SOCIETY INFLUENCE THEORETICAL BELIEF IN THE NECESSITY FOR LAW.

UNDERSTANDING I

LAW SERVES AS A NECESSARY MEANS OF SOCIAL CONTROL OVER ANTISOCIAL BEHAVIOR

A. *Explanation of Understanding I*

Perhaps the most fundamental reason why men are willing to give up total freedom to accept the social control of a society is for protection against aggression. All societies have found it necessary to channel and restrict aggression for the protection of the members of the society. In restricting aggressive or antisocial behavior, societies rely on a combination of social control mechanisms. Such mechanisms include the use of the socialization or training process, the use of group pressure, and the use of the law.

Module 1

B. *Teaching Understanding 1*

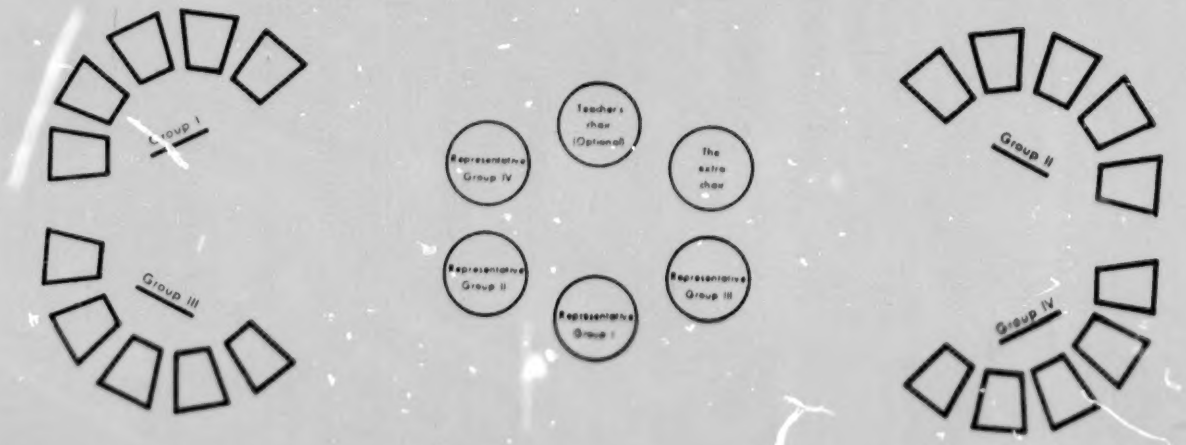
OBJECTIVES

- The student can extrapolate from a description of an incident in a society those elements which define the social control process in that society and illustrate steps in the process of control.
- In a discussion of an incident of wrongdoing in a society, the student can compare his analysis of the situation with that of others in the group and make a summary statement which indicates the areas of relationship among the various points of view.

QUESTIONS TO REACH THE UNDERSTANDING

- Why is social control a problem in both preindustrial and industrial societies?
- Why does the complex industrial society place greater emphasis on legal means of social control than does the preindustrial society?

GRAPHIC REPRESENTATION OF A "FISHBOWL" EXERCISE (See text, p. 4.)



Module 1

DETAILED DESCRIPTION OF STRATEGIES

The following are suggested classroom strategies for assisting the student in arriving at Understanding I:

(a) Divide the class into several groups and have each group examine and discuss an account of an antisocial act in a "primitive" or simple, preindustrial society. Sample excerpts which can be used for this purpose are included in the resource section for Understanding I which follows the teaching strategies. The illustrative accounts consist of the following:

—murder among the Cheyenne
—murder among the Eskimo
—murder among the Ashanti
—involuntary manslaughter among the Ibo

Each group of students should select a discussion leader and a recorder to report the group's deliberations to the rest of the class.

Each group, after reading the particular excerpt assigned to it, should discuss possible answers to these questions:

—How is the order of the society in this account preserved?

—What was the role of each of the following in preserving the order of the society?
- socialization (training)
- group pressure
- law

DISCUSSION OF STRATEGIES AND RESOURCES

The function of law in controlling antisocial behavior is probably the function with which students are most familiar. The importance of nonlegal controls to the maintenance of such social control should be developed so that students see social control as a blend of legal and nonlegal forces.

The distinctive contribution of law to control antisocial behavior can be studied through examination of the four characteristics of a legal system. Most societies will have some of the characteristics of such a legal system and a developed industrial society will usually have them all. By removing one characteristic legal function at a time from each case study selected, students can see why control of antisocial behavior in society is less effective when that particular function of a legal system is not performed. Emphasize the power of law as (1) a definitional tool, (2) an organizational tool, (3) a punitive tool.

THE "FISHBOWL" OR "GROUP-ON-GROUP" TECHNIQUE

Since this device, known variously as a "fishbowl" or "group-on-group" technique, lends itself especially well to a number of the teaching strategies suggested among these modules. special attention is given here to an explanation of the process. Most of what follows here is an outline of an approach found successful by many social studies teachers. It culminates in a group process popularly termed a "fishbowl." In addition to the sorts of uses suggested in these strategies, the fishbowl has proven useful in introducing new courses and in periodic student/teacher evaluations of courses. Applications

—What were some of the ways in which the social order was maintained that differ from our culture?

—Are there any hints in the account of institutions or practices which have grown in importance in maintaining the social order of an industrial society like our own?

The teacher may draw together the considerations of the various groups in open class discussion or he may employ a variation of the fishbowl or group-on-group technique (see page 4) to synthesize group findings. The key question toward which the group activity should build is: How is social control effected in a preindustrial society?

Materials that could be developed into a case study for a preindustrial society include any that show control of antisocial behavior in such a society. Three of the examples in the resource section (accounts 1, 2, and 3) are from E. Adamson Hoebel, *The Law of Primitive Man*, Harvard University Press, 1954. Other examples can be drawn from the same source. Another source of information useful to the teacher in developing similar case studies would be Ruth Benedict, *Patterns of Culture*, Houghton-Mifflin Company, 1934. The fourth account among the illustrative examples in the resource section is an excerpt from Chinua Aschebe, *Things Fall Apart*, Fawcett Books, 1970. This classic novel

and variations are many. There is an obvious emphasis on process and interaction among students in small groups rather than large class sessions.

There are several steps in this group process. Various devices (e.g., a few questions) can be used in initiating the proceedings which lead up to the fishbowl. In many instances, the first two steps can and should be omitted and the process begun with step three.

1. Each student receives something to read or think about, some questions to answer, a situation to react to, etc.

2. Each student is directed to compare his responses with those of another person (perhaps the student sitting next to him). Where applicable, each should be urged to make sure his partner did what he was directed to do and, when applicable, that he got into the "why" aspect (analysis) of the matter being deliberated.

3. Students will then be directed to form groups with no fewer than 4 students in each group. Each group will then discuss the responses of individuals to the assigned task. A frequently used approach is to have each group attempt to synthesize or combine the responses of the individuals composing the group. One variation is to equip each group with a "magic marker" and a large piece of paper. The composite reactions, findings, deliberations, etc., can be written large enough so the entire class can read the statement of each group when they are taped to the wall later during

about a traditional African society, that of the Ibo people, was written in English by a modern Ibo. This excerpt illustrates the use of literature and particularly the novel as source material for similar case studies.

In developing his own material for case studies, the teacher may find it necessary to edit and otherwise modify excerpts before they are of optimum value to his students. The author and publisher of any such material should always be identified.

(b) As an alternative, a single case study from a preindustrial society may be considered by the class as a whole using the same questions suggested above. As in the above strategy, the focal point would be the nature of social control in a preindustrial society.

(c) Have all students read a brief account of an antisocial act in an industrial society. A case study could be developed by piecing together excerpts about a famous crime from periodical or historical accounts. An illustrative case study, the Leopold-Loeb murder of Bobby Franks is included in the resource section

the fishbowl. (For certain kinds of exercises the teacher may direct that the statements be arranged in a certain manner; e.g., a list of items in descending order of importance or with concrete statements listed at the top followed by the abstract statements.)

4. The fishbowl which then follows might be more easily understood if thought of as a modification of a panel discussion, which, in a sense, it is. The class is arranged in two groups, roughly in the form of two concentric circles. The inner group or circle, perhaps seated around a table, is composed of one representative from each of the previous groups and the teacher who acts as moderator or facilitator. There is also an empty chair. The ground rules call for all those in the outer circle to be observers looking in on the fishbowl and to remain silent throughout the ensuing discussion (except as indicated below with references to the empty chair). The group representatives in the fishbowl will then continue the process of synthesis which went on in the groups. If the deliberations of the small groups were summarized on large pieces of paper they may be posed on the walls in view of all. The objective now is to bring the various considerations together or to work out opinions. Depending on the nature of the assignment, what emerges may take the form of a composite list of ideas or a set of opinions. The formulation of this is the task of those students actually in the fishbowl. However, if anyone in the outer group of observers wishes to speak (either to comment, question, or influence discussion), he may do so by taking the empty chair in the fishbowl, speaking

DETAILED DESCRIPTION OF STRATEGIES

for Understanding I. Any case selected for use with this strategy should demonstrate the four characteristics of a formal legal system:

(1) formal written prohibition of the act
(2) authorized enforcement officials
(3) criminal court system
(4) authorized correctional institutions

Through questions and discussion related to the case study, the teacher can assist the students in recognizing these characteristics. Illustrative questions include the following:

—What determined that the antisocial act was illegal?
—Who solved the crime? How? Why?
—How was the penalty determined?
—How did the criminal have an opportunity to change his behavior?
—What are the characteristics of the process in an industrial society for dealing with extreme antisocial behavior?

(d) Have students working individually, in pairs, or in small teams use the *Reader's Guide to Periodical Literature*, the *New York Times Index*, and other library materials and available resources to research a particular antisocial act. The number of students gathering information on a specific act should be limited by the teacher so that the class as a whole investigates several cases. Widely publicized recent homicides may generate

DISCUSSION OF STRATEGIES AND RESOURCES

immediately, and then vacating the chair. Discussion is facilitated by limiting the number of students actually engaged in it, but no one is excluded should he desire to say something.

As indicated above, the teacher may not want to use steps 1 and 2 in some activities, but may want to divide the class into groups (step 3) and move from there directly into the fishbowl (step 4). The approach is as flexible as the teacher.

DETAILED DESCRIPTION OF STRATEGIES

interest and prove practical subjects on which to gather data. Historical accounts may prove useful in working with less recent events. Possible subjects for this exercise include such cases as:

—Lindbergh kidnapping case
—Richard Speck's mass murder of 8 nurses
—Manson "family" murder of Sharon Tate and others
—Murder of Joseph Yablonski

Others may be suggested by the teacher or by the students.

Students should be directed to look for the basic characteristics of a legal system (see strategy c) in researching these cases.

Suggested questions relative to this matter for use with the two preceding strategies include the following:

—How does the impact of constant technical change increase the need for legal controls in a complex industrial society?

—How does mobility of population in a complex industrial society contribute to a greater need for legal controls?

—Why is the process of socialization less effective for controlling antisocial activities in the more complex industrial society?

DISCUSSION OF STRATEGIES AND RESOURCES

The written results of superior student-prepared case studies could be used by the teacher in the future. Groups of students could read several such case studies and determine the characteristics of a formal legal system which might appear as elements of commonality in the various cases.

An important part of both the preceding strategies (c and d) should be an examination of the greater need for legal controls on antisocial activities in a complex industrial society as compared with a simpler preindustrial society. The teacher should guide students in making comparisons that will deepen an understanding of that fact.

—Why is maintaining group pressure for order more difficult in an impersonal complex society?

(e) As an optional activity, the teacher may have the class read and discuss the street play, "Do Not Spit at Random." Written by a stage group in Hangchow, People's Republic of China, during the late 1950's and performed many times in support of the patriotic health movement, this short play illustrates a mixture of nonlegal and legal control of antisocial behavior. The society which produced the play is neither a simple, preindustrial society nor a completely industrial society. Apparent in the play are some elements of social control characteristic of the preindustrial society, and other elements more characteristic of the industrial society.

Some suggested discussion questions are:

—In what ways does the situation illustrate a means of social control characteristic of a preindustrial society?

—In what ways does it illustrate social control more characteristic of an industrial society?

—Why are the Young Pioneer and the others unsuccessful in getting the offender to correct his antisocial behavior until someone (the girl's mother) recognizes him?

—What indications are there of greater social cohesiveness in this society than in our own?

—How do the suggestions for handling the offender differ from what one might expect for comparable antisocial behavior in our society?

(f) In a final summarizing discussion the teacher should assist students in realizing the importance of the particular contribution of law to the social control. The basis for this can be a comparison of the case studies of antisocial behavior in preindustrial society. Discussion may be related to several key questions including the following:

—How many of the characteristics of law are present in the preindustrial case studies?

—How many of the characteristics of law are present in the industrial case study?

--What happens in each (any) case when each legal characteristic identified is removed in turn?

RESOURCES*

The following quoted materials on pages 11-18 have been removed in compliance with copyright laws.

Hoebel, E.A. The Law of Primitive Man. Harvard University Press. 1954. pp. 157-159. Reprinted by permission.

Murder Among the Cheyenne

Hoebel, E.A. The Law of Primitive Man. Harvard University Press. 1954. pp. 87-90. Reprinted by permission.

Murder Among the Eskimo

Hoebel, E.A. The Law of Primitive Man. Harvard University Press. 1954. pp. 235-237. Reprinted by permission.

Murder Among the Ashanti

Achebe, Chinua. Things Fall Apart. Fawcett Books. 1970. pp. 117-118. Reprinted by permission of Astor, Honor, Inc., Stamford, Connecticut.

Manslaughter Among the Ibo

McKernan, Maureen. The Amazing Crime and Trial of Leopold and Loeb. Plymouth Court Press. 1924; and Erle Stanley Gardner's Introduction to Nathan F. Leopold, Life Plus 99 Years. Doubleday and Company. 1958. (An abbreviated account.)

THE MURDER OF BOBBY FRANKS (From Historical Accounts)

THE FATE OF NATHAN LEOPOLD (From Newspaper Accounts)

New York Times, August 7, 1952.

New York Times, February 21, 1958. "Leopold Wins His Parole - In 1924 'Thrill' Slaying."

New York Times, February 21, 1958. "A 'Changed' Man - Nathan Leopold."

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pp 12-16

UNDERSTANDING II

LAW SERVES AS A NECESSARY MEANS OF PROVIDING ACCEPTED PROCESSES FOR DISPUTE RESOLUTION TO FURTHER EFFECTIVE SOCIAL CONTROL.

A. *Explanation of Understanding II*

The way in which private citizens settle disputes among themselves affects the social control of a society. Without legal and nonlegal mechanisms for the settlement of disputes, settlements may be made through means unacceptable to the society. Such settlements through unrecognized methods may cause conflict in the society either because the decision is not seen as fair or because the means of reaching the decision are not seen as fair. Most societies need recognized accepted forms of dispute settlement in order to further effective social control.

B. *Teaching Understanding II*

OBJECTIVES

- Given the details of a situation in which there is a dispute between two individuals each of whom is not aware of negligence or wrongdoing on his part, the student can suggest several ways to resolve the dispute, and can then state why a legal technique offers the most satisfactory solution.

QUESTIONS TO REACH UNDERSTANDING

- What characteristics are necessary for a recognized acceptable form of dispute resolution?
- Why is a recognized acceptable form of dispute resolution necessary to further effective social control in a society?

Module 1

DETAILED DESCRIPTION OF STRATEGIES

The following are suggested classroom strategies for assisting students in arriving at Understanding II.

Students are to be involved in a consideration of two brief hypothetical cases and an actual case of historical note. In all three cases, disputes have arisen without antisocial behavior or dishonesty having been present. The objective here is to develop an understanding that:

- Disputes are possible even if antisocial behavior is not present.
- Necessary elements for acceptable dispute resolution include (a) an investigative process and (b) an accepted decision-making authority.
- Law is usually necessary for dispute resolution.

(a) Students are to be engaged in a consideration of two hypothetical case studies each of which is accompanied by several guide questions.

Hypothetical Case 1. A valuable camera is stolen from A by B. After selling the camera to C, who does not realize he is receiving stolen goods, B disappears. Subsequently A and C end up in a dispute with both claiming the camera.

- What is the nature of the dispute between A and C?

DISCUSSION OF STRATEGIES AND RESOURCES

Students should see this understanding as a logical transition between Understandings I and III. Although dispute resolution techniques can be used to resolve disputes caused by antisocial behavior, this understanding concentrates primarily on disputes arising between men of good intent. Yet the focus of the understanding is still on the use of these techniques for social control. Therefore, the idea of social control from Understanding I is broadened and developed. Students should also see that law as an organizational tool is important to the definition and operation of the dispute resolution processes. This leads directly to the focus of Understanding III on the importance of law as an organizing technique. Stress should be placed on the use of law as a positive rather than punitive tool.

- Did either A or C engage in antisocial behavior or act in a dishonest manner?
- How can this dispute be resolved? What elements are essential to the resolution of this dispute?

Hypothetical Case 2. Two automobiles have a head-on collision on the highway. Each driver is injured and requires hospitalization. Each driver believes the other is at fault.

- What is the nature of the dispute?
- Was either driver dishonest or did either necessarily engage in an antisocial behavior?
- How could a dispute be possible if no antisocial behavior is involved?
- How can this dispute be resolved? What is necessary to reach a solution?

The suggested strategy for considering these hypothetical cases is a modification of the fishbowl or group-on-group technique. (See explanatory note on page 4.) Provide each student with the two case studies and accompanying guide questions with directions to attempt to answer the questions. After individual students have had time to consider the cases, have each student pair up with another for comparing their reactions to each situation. Next, combine students into groups for further discussion with directions to try and agree within each group. Finally move to a fishbowl arrangement with a representative from each small group joining

DETAILED DESCRIPTION OF STRATEGIES

the inner circle. The teacher should act as facilitator and assist in drawing together final conclusions.

(b) Give students the background of the case, Fletcher vs. Peck. Care should be taken in identifying the actual dispute in this case.

After students have become familiar with the situation, divide the class into several groups or "courts." Provide each group with a copy of the Constitution of the United States. Call attention to those passages of the Constitution which declare that no state shall pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts. Each group of students should then discuss the situation and attempt to resolve the basic dispute. The following questions should be put to the groups:

- Is the dispute the result of any anti-social behavior on the part of either Fletcher or Peck toward the other?
- Although members of the 1795 legislature had been bribed, was it constitutional for the 1796 legislature to repeal the act in question of the previous legislature? Explain.
- Was the 1796 act (which repealed the 1795 act) constitutional or unconstitutional? Why?

DISCUSSION OF STRATEGIES AND RESOURCES

In the course of discussion, students should see that a dispute can arise in spite of the existence of rules, and that a process for investigation of the dispute is necessary, as is a recognized and accepted decision-making authority. Case 1 illustrates that men can disagree on their interpretation of a rule. Case 2 demonstrates that men of good faith can be in dispute because at least one of them is not basing his judgment on fact.

Strategy (b) will involve students in the consideration of a historical case which was settled by the Supreme Court in 1810. The case of Fletcher v. Peck has its origins in the Yazoo land controversy. The roots of the issue are to be found in fraudulent land speculation in western lands during the formative era of the American republic. In time, the case became a *cause célèbre* with far-reaching implications for American law, government, and society. After this exercise, some students may want to further research the case of Fletcher v. Peck and report back to the class on their findings. (See page 25).

In this discussion, keep in mind that the act passed by the corrupt legislature involved a conveyance (sale) of land to speculators who had then resold the land to third parties.

After completing its deliberations, each group should render a decision and be prepared to explain that decision.

After each group has discussed the case, have groups share their deliberations with one another. When discussion has ended, provide each group with a copy of excerpts from the actual Supreme Court decision which settled the Fletcher vs. Peck case. Students can compare their ideas with those of the actual Supreme Court decision. The answers to the following questions should be reviewed at this time.

- How does this illustrate the possibility of disputes without antisocial behavior?
- What were the essentials in resolving this dispute?
- What were the necessary functions of law in this situation?

(c) Have groups of student volunteers construct examples of good faith conflicts which defy private resolution. These cases may be presented in the form of skits to the rest of the class. Those observing the skits may be asked to speculate on ways in which the disputes may be resolved when the disputants are deadlocked. Various alternatives for dispute resolution may be considered (e.g., coin flipping), but ultimately students should realize the need for an official method, a judicial process, for resolving disputes.

Module 1

RESOURCES*

Edited versions of the Fletcher v. Peck decision are contained in:

Commager, H.S. *Documents of American history, Part I.* Appleton-Century-Crofts. pp. 205-207.

James, L.F. *The Supreme Court in American life.* Problems in American History Series. Scott, Foresman and Company. pp. 38-39.

BACKGROUND TO THE YAZOO LAND CONTROVERSY

The origins of the Yazoo land issue are to be found in a fraudulent speculation in western lands during the formative era of the American republic.

In the late 1790's, the state of Georgia owned vast tracts of land in what are today the states of Mississippi and Alabama. The Yazoo River, a tributary of the Mississippi River, flows through this area. The Georgia legislature enacted legislation in 1795 which sold some 35,000,000 acres of this western land to several companies of buyers known as the Yazoo Land Companies. These buyers were called speculators because their aim was to resell the land to others at a profit, a practice common in the expanding United States at the time.

The Georgia legislature decided to sell the land after many of the legislators had been bribed by the Yazooists. In addition, many of the legislators who voted for the measure owned shares in the companies which were to benefit. The act of 1795 sold the enormous areas of land for a mere 1 1/2 cents an acre.

Following widespread indignation over such corruption, a new legislature the next year sought to repeal the 1795 act which sold the land to the Yazoo Land Companies. The legislature repealed the act and instructed state courts not to accept as legal any claim to land resulting from the previous legislature's action. Anyone who held any of the land at this point could not sue the state of Georgia in a Federal court because this was forbidden by Amendment XI to the United States Constitution. In the meantime, John Peck of Boston, a Yazooist, sold 15,000 acres to Robert Fletcher of New Hampshire. Fletcher later sued Peck on the grounds that he did not have proper legal claim to the land. This dispute between two individuals of different states qualified for consideration by Federal courts and eventually went before the Supreme Court. The issue narrowed down to whether the act of the Georgia legislature repealing the land grant was constitutionally valid. In other words, once the legislature had sold the land, could it be taken back by a later legislature?

*Direct quotations from statutes are indicated by the use of quotation marks. Other statements are summaries or paraphrases of the statute listed.

Fletcher v. Peck 6 Cr 87 (1810)*

The Supreme Court's Decision in Fletcher v. Peck

"...This suit was instituted on several convenants contained in a deed made by John Peck, the defendant in error, conveying to Robert Fletcher, the plaintiff in error, certain lands which were part of a large purchase made by James Gunn and others, in the year 1795, from the State of Georgia, the contract for which was made in the form of a bill passed by the legislature of that State. ...

"That the legislature of Georgia, unless restrained by its own constitution, possesses the power of disposing of the unappropriated lands within its own limits, in such manner as its own judgment shall dictate, is a proposition not to be controverted. The only question, then, presented by this demurrer, for the consideration of the court, is this, did the then constitution of the State of Georgia prohibit the legislature to dispose of the lands, which were the subject of this contract, in the manner stipulated by the contract? ...

"...In the constitution of Georgia, adopted in the year 1789, the court can perceive no restriction on the legislative power, which inhibits the passage of the act of 1795. They cannot say that, in passing that act, the legislature has transended its powers, and violated the constitution. ...

"That corruption should find its way into the governments of our infant republics, and contaminate the very source of legislation, or that impure motives should contribute to the passage of a law, or the formation of a legislative contract, are circumstances most deeply to be deplored. How far a court of justice would, in any case, be competent, on proceedings instituted by the State itself, to vacate a contract thus formed, and to annul rights acquired under that contract, by third persons having no notice of the improper means by which it was obtained, is a question which the court would approach with much circumspection. It may well be doubted how far the validity of a law depends upon the motives of its framers,...

"...The case, as made out in the pleadings, is simply this. One individual who holds lands in the State of Georgia, under a deed covenanting that the title of Georgia was in the grantor, brings an action of covenant upon this deed, and assigns, as a breach, that some of the members of the legislature were induced to vote in favor of the law, which constituted the contract, by being promised an interest in it, and that therefore the act is a mere nullity. ...

"If a suit be brought to set aside a conveyance obtained by fraud, and the fraud be clearly proved, the conveyance will be set aside, as between the parties; but the rights of third persons, who are purchasers without notice, for a valuable consideration, cannot be disregarded. Titles, which, according to every legal test, are perfect, are acquired with that confidence which is inspired by the opinion that the purchaser is safe. ...

"Is the power of the legislature competent to the annihilation of such title, and to a resumption of the property thus held?

"The principle asserted is, that one legislature is competent to repeal any act which a former legislature was competent to pass; and that one legislature cannot abridge the powers of a succeeding legislature.

"The correctness of this principle, so far as respect general legislation, can never be controverted. But if an act be done under a law, a succeeding legislature cannot undo it. The past cannot be recalled by the most absolute power. Conveyances have been made,...

"When, then, a law is in its nature a contract, when absolute rights have vested under that contract, a repeal of the law cannot devest those rights;...

"...Georgia cannot be viewed as a single, unconnected, sovereign power, on whose legislature no other restrictions are imposed than may be found in its own constitution. She is a part of a large empire; she is a member of the American Union; and that union has a constitution the supremacy of which all acknowledge, and which imposes limits to the legislatures of the several States, which none claim a right to pass. The constitution of the United States declares that no State shall pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts. ...

"...This rescinding act [the act of 1796] would have the effect of an *ex post facto* law. It forfeits the estate of Fletcher for a crime not committed by himself, but by those from whom he purchased. ...

"It is, then, the unanimous opinion of the court, that, in this case, the estate having passed into the hands of a purchaser for a valuable consideration, without notice, the State of Georgia was restrained, either by general principles which are common to our free institutions, or by the particular provisions of the Constitution of the United States, from passing a law whereby the estate of the plaintiff in the premises so purchased could be constitutionally and legally impaired and rendered null and void."

*A Note on Early Citations.

Supreme Court decisions are contained in *United States Reports*, the official report printed by the Government Printing Office. However, until 1875 these official reports were cited by the names of the individuals who served as Supreme Court reporters. These early designations were as follows:

"1789-1800	Dallas (Dall.)	4 volumes	1-4
1801-1815	Cranch (Cr.)	9 "	5-13
1816-1827	Wheaton (Wheat.)	12 "	14-25
1828-1842	Peters (Pet.)	16 "	26-41
1843-1860	Howard (How.)	24 "	42-65
1861-1862	Black (Bl.)	2 "	66-67
1863-1874	Wallace (Wall.)	23 "	68-90"

Thus, for Fletcher v. Peck, the citation reads 6 Cranch 87, meaning the sixth volume of Cranch's reports, beginning on page 87.

UNDERSTANDING III

LAW SERVES AS A NECESSARY MEANS OF PROVIDING SOCIAL GUIDANCE IN DAILY AFFAIRS.

A. *Explanation of Understanding III*

Law is not only one of the means of social control, it also may be useful as an *organizational tool*. This understanding deals with the function of law as a means of fulfilling basic organizational needs of society. The understanding concentrates on the use of law to establish necessary guidelines for convenient operation in the society. Such guidelines may indirectly help in the maintenance of social control because legal organization does reduce the chance of conflict through establishing an accepted pattern of operation.

B. *Teaching Understanding III*

OBJECTIVES

- The student may demonstrate his understanding of the guidance function of the law by identifying potential problems in a society that can be resolved by an organizational type law.
- Given a set of regulations governing various aspects of his life, the student will be able to list reasons why these rules are necessary and to determine at which level of government (Federal, state, or local) the regulations should be enacted for the best interests of society.

QUESTIONS TO REACH UNDERSTANDING

- Why is it necessary to have accepted standards provide guidance for daily actions?
- Why is it frequently necessary to use law to provide such guidance?

DETAILED DESCRIPTION OF STRATEGIES

(a) The objective of this strategy is to develop student awareness of law being used to channel and guide many daily activities of people living in our society. (It should be kept in mind that, in terms of Understanding I, we live in an industrial society.)

The teacher may initiate the compilation of a list of guidance laws by citing an example and eliciting others from students in a whole class setting. Recalling one's actions for an entire day and discovering points in which guidance laws touch the individual's life can provide suggestions. The teacher may wish to make a list on the chalkboard as the students make suggestions and have students write the list in their notebooks for reference. (or)

After establishing a working understanding of what a guidance law is, divide the class into groups. Have each group compile a list of laws which serve a guidance function in daily activities. Each group should be given the charge of coming up with as many different examples as possible and then grouping the examples in broad categories. The group may then report their lists and categories to the entire class, to produce a class consensus list.

Examples of guidance laws include:

- laws on weights and measures
- laws for traffic control
- licensing laws for:
  - professional qualifications (doctors, lawyers, teachers)

DISCUSSION OF STRATEGIES AND RESOURCES

In teaching this understanding, it may be necessary to emphasize that guidance and dispute resolution are distinct legal functions. The guidance function provides specific substantive laws for necessary regulation. The dispute resolution function provides specific procedural laws to deal with disagreements. Clearly, dispute resolution has elements of the organizational function of guidance regulations. Likewise, the guidance function helps further social control through reducing the possibilities for conflict by establishing organized patterns of accepted action. Guidance laws help prevent disputes from arising and dispute resolution techniques deal with those that arise despite guidance laws. Each type of law performs a necessary and distinct function in the maintenance of a stable society.

In teaching this understanding, the organizational function of law should be stressed. Law provides guidelines that make life more convenient, efficient, and less dangerous for men of good intent.

- tested skills (automobile drivers, airplane pilots)
- permission to use certain public property (radio and television stations)
- permission to perform certain private acts (hunting, marriage)

(b) Divide the class into several groups. Give each group samples of guidance laws taken from the resource section for Understanding III which contains a selection of guidance laws. Most of the excerpts in this section are from McKinney's Consolidated Laws of New York and are related to traffic control, weights and measures, and licensing for professional qualifications, automobile driving, and marriage. Excerpts from the United States Code Annotated are concerned with licensing the use of a specific kind of public property, the air waves. The excerpts from a city Code of Ordinances illustrates local guidance laws. The laws in the resource section are grouped according to three categories:

. weights and measures
. traffic control
. licensing

Students will read the laws assigned to the group and also determine the guidance function of each particular law, addressing themselves to the impact that these specific laws have on:

. efficiency of organized methods of operation
. possibility of conflict

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

Students should be able to generalize that the absence of guidance laws would probably reduce efficiency and increase the possibilities for conflict.

The thinking of the various groups can be shared and discussed by implementing the fishbowl with the teacher serving as facilitator.

(c) Divide the class into the same groups as in the previous strategy. Students in each group should be told to imagine a society which lacks the particular guidance laws previously considered by that group. Within each group, students should exchange ideas as to what life would be like in a society without those laws. The group should try to determine what situations might arise. Then each group should improvise brief skits dramatizing their conclusions about life in an imaginary society. Skits can illustrate humorously the increased conflict and decreased efficiency that might accompany the absence of guidance laws.

(d) A summary of Understanding III can center on a comparison of the guidance and dispute resolution functions of the law.

- How are the functions of dispute resolution and guidance similar?
- How are the two different?

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

(e) Assign interested students to investigate local (city or town) codes of ordinances. Copies will be located in the offices of city and town clerks respectively. Local libraries will have copies of local codes and many lawyers will have copies on hand. Students should take note of the nature of some of the local laws performing guidance functions and report back to class.

RESOURCES*

McKinney's Consolidated Laws of New York. Article 16—Weights and Measures.

Section 176. Description of weights and measures

"The standard weights and measures that were furnished to this state by the government of the United States, in accordance with a joint resolution of congress, approved June fourteenth, eighteen hundred and thirty-six, and consisting of one standard yard measure and one set of standard weights, comprising one Troy pound, and nine avoirdupois weights of one, two, three, four, five, ten, twenty, twenty-five and fifty pounds respectively; one set of standard Troy ounce weights, divided decimally from ten ounces to the one ten-thousandth of an ounce; one set of standard liquid capacity measures, consisting of one wine gallon of two hundred and thirty-one cubic inches, one-half gallon, one quart, one pint and one-half pint measure; and one standard half bushel, containing one thousand and seventy-five cubic inches and twenty one-hundredths of a cubic inch, according to the inch hereby adopted as standard, and such new weights, measures, balances and other apparatus as may be received from the United States as standard weights, measures, balances and apparatus in addition thereto or in renewal thereof as well as such weights, measures, balances and apparatus as may be added by the state department of weights and measures and verified by the national bureau of standards shall be the standards of weights and measures throughout this state."

Section 177. The unit of length and surface

"The units or standard measures of length and surface, from which all other measures of extension, whether lineal, superficial or solid, shall be derived and ascertained, are the standards of length designated in this article. For measures of cloths and other commodities commonly sold by the yard, the yard may be divided into halves, quarters, eighths, and sixteenths. The rod, pole or perch, contains five and one-half yards; the mile, one thousand seven hundred and sixty yards. The chain for measuring land is twenty-two yards long and is divided into one hundred equal parts called links. The acre for land measure, shall be measured horizontally and contain ten square chains, equivalent in area to a rectangle sixteen rods in length and ten in breath; six hundred and forty acres being contained in a square mile."

*Direct quotations from statutes are indicated by the use of quotation marks. Other statements are summaries or paraphrases of the statute listed.

Section 178. Units of weights

"The units or standards of weight from which all other weights shall be derived and ascertained, shall be the standard weights designated in this article. The hundred-weight consists of one hundred avoirdupois pounds and twenty hundred weight are a ton. ..."

Section 179. Units of capacity

"The units or standards of measure of capacity for liquids from which all other measures shall be derived and ascertained shall be the standards designated in this article. The barrel is equal to thirty-one and one-half gallons and two barrels are a hogshead. The parts of the liquid gallon shall be derived from the gallon by continual division by the number two, so as to make half gallons, quarts, pints, half pints and gills. The peck, half peck, quarter peck, quart, pint and half pint measures for measuring commodities which are not liquids shall be derived from the half bushel by successively dividing that measure by two."

Section 180. Duties of commissioner in relation to weights and measures

"The commissioner shall take charge of the standards adopted by this article as the standards of the state; cause them to be kept in the principal office of the department in the city of Albany, from which they shall not be removed, except for repairs or for certification, and take all other necessary precautions for their safekeeping. ...The commissioner shall inspect all standards used by the counties or cities at least once in two years and shall keep a record of the same. He shall as often as he shall deem necessary visit the various cities and counties of the state in order to supervise the work of the local sealers and in the performance of his duties he may inspect the weights, measures, balances or any other weighing or measuring appliances of any person, firm or corporation, and may inspect and test all containers sold by weight, measure and count. ..."

Section 183. City Sealer

"Except as hereinafter provided there shall be a city sealer of weights and measures to be appointed by the mayor with the approval of the common council of each city, or in such other way as the city charter shall designate. He shall be paid a salary to be fixed and determined by the board or body authorized to determine salaries of city officials, and no fees shall be charged or received by him or by the city for the inspection or testing of weights, measures or weighing or measuring devices. He shall perform in his city the duties of and have like powers as a county sealer in a county. ..."

Section 184. Sealing of approved weighing and measuring devices

"Whenever a city, county or state weights and measures official inspects any weighing or measuring device and finds that it corresponds or causes it to correspond with the standards in his possession he shall seal or mark the same with an appropriate device. ..."

Section 184-a. Petroleum devices to be inspected and sealed

"No device shall be used for the purpose of dispensing and measuring petroleum products until inspected by an inspector of the department or by the city or county weights and measures official and found to have been properly installed and to be properly adjusted so as to measure accurately the petroleum product to be dispensed by it. ..."

McKinney's Consolidated Laws of New York. Article 24—Traffic Signs, Signals and Markings

Section 1110. Obedience to and required traffic-control devices

"(a) Every person shall obey the instructions of any official traffic-control device applicable to him placed in accordance with the provisions of this chapter, unless otherwise directed by a traffic or police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this title. ..."

Section 1111. Traffic-control signal legend

"Whenever traffic is controlled by traffic-control signals exhibiting different colored lights, or colored lighted arrows, successively, one at a time or in combination, only the colors green, yellow and red shall be used, except for special pedestrian signals carrying a word legend, and said lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

"(a) Green indication:

"1. Vehicular traffic facing a circular green signal may proceed straight through or turn right or left unless a sign at such places prohibits either such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right of way to other vehicles and to pedestrains lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited. ...

"(b) Steady yellow indication:

"1. Vehicular traffic facing a steady yellow signal may enter the intersection; however, said vehicular traffic is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection. ...

"(c) Dark period or red-green combined when shown following the green indication:

"1. Vehicular traffic facing such signal is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection. ...

"(d) Steady red indication:

"1. Vehicular traffic facing a steady red signal shall stop at a clearly marked stop line, but if none, then shall stop before entering the crosswalk on the near side of the intersection, or in the event there is no crosswalk, at the point nearest the intersecting roadway where the driver has a view of the approaching traffic on the intersecting highway before entering the intersection and shall remain standing until an indication to proceed is shown. ..."

McKinney's Consolidated Laws of New York. Article 25—Driving on Right Side of Roadway, Overtaking and Passing, etc.

Section 1120. Drive on right side of roadway; exceptions

"(a) Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, except as follows:

"1. When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

"2. When overtaking or passing pedestrians, animals or obstructions on the right half of the roadway;

"3. When an obstruction exists making it necessary to drive to the left of the center of the highway; provided, any person so doing shall yield the right of way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;

"4. Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or

"5. Upon a roadway restricted to one-way traffic.

"(b) In addition, upon all roadways, any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

"(c) Upon any roadway having four or more lanes for moving traffic and providing for two way movement of traffic, no vehicle shall be driven to the left of the center line of the roadway, except when authorized by signs or markings designating certain lanes to the left side of the center of the roadway for use by traffic not otherwise permitted to use such lanes, or except as permitted under subsection (a) (2) hereof."

Section 1142. Vehicle entering stop or yield intersection

"(a) Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop as required by section eleven hundred seventy-two and after having stopped shall yield the right of way to any vehicle which has entered the intersection from another highway or which is approaching so closely on said highway as to constitute an immediate hazard during the time when such driver is moving across or within the intersection.

"(b) The driver of a vehicle approaching a yield sign shall in obedience to such sign slow down to a speed reasonable for existing conditions, or shall stop if necessary as provided in section eleven hundred seventy-two, and shall yield the right of way to any pedestrian legally crossing the roadway on which he is driving, and to any vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard during the time such driver is moving across or within the intersection. ..."

McKinney's Consolidated Laws of New York. Article 30—Speed Restrictions

Section 1180. Basic rule and maximum limits

"...no person shall drive in excess of such maximum school speed limits during the school noon hour, school recess, or while children are going to or leaving school during opening or closing hours. ..."

Module 1

Code of Ordinances (City) — Schenectady Code

Article III. Operation

Sec. 28-36. Speed generally.

"No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions then existing."

Sec. 28-38. Thirty mph limit.

"Upon the basis of an engineering and traffic investigation thirty (30) miles per hour is hereby established as the maximum speed at which vehicles may proceed within the corporate limits of this city, except on State Street between the easterly city line and Fehr Avenue."

Sec. 28-39. Thirty-five mph limit.

"Upon the basis of an engineering and traffic investigation thirty-five (35) miles per hour is hereby established as the maximum speed at which vehicles may proceed within the corporate limits of this city on the following highways:

State Street between the easterly city line and Fehr Avenue."

McKinney's Consolidated Laws of New York — Vehicle and Traffic

Section 501. Drivers' licenses and learners' permits

"1. The commissioner shall issue classified drivers' licenses as provided in this article. Any such license shall be valid only for the operation of the type of vehicles specified for each such class of license.

"2. Classes of licenses. (a) Class 1. Such license shall be valid for the operation of any passenger vehicle, any taxicab, any truck, any tractor, any truck trailer combination, or any tractor-trailer combination.

"(b) Class 2. Such license shall be valid for the operation of any bus.

"(c) Class 3. Such license shall be valid for the operation of any passenger [illegible] any taxicab, any truck or any tractor.

"(d) Class 4. Such license shall be valid for the operation of any passenger vehichle, any taxicab, or any truck having a maximum gross weight of eighteen thousand pounds or less.

"(e) Class 5. Such license shall be valid for the operation of any passenger vehicle or any truck having a maximum gross weight of eighteen thousand pounds or less.

"(f) Class 6. Such license shall be valid for the operation of any passenger vehicle or any truck having a maximum gross weight of eighteen thousand pounds or less by a person under eighteen years of age, subject to the restrictions contained in subdivision three-a of this section. Such license shall automatically become a class 5 license when the holder becomes eighteen years of age.

"3. Operation of motorcycles. No driver's license shall be valid for the operation of a motorcycle unless such license is endorsed as prescribed by the commissioner to indicate that such license is valid for the operation of motorcycles. ..."

McKinney's Consolidated Laws of New York. Article 130—Professions-General Provisions

Section 6501. Admission to a profession (licensing)

"Admission to practice of a profession in this state is accomplished by a license being issued to a qualified applicant by the education department. To qualify for a license an applicant shall meet the requirements prescribed in the article for the particular profession."

Section 6504. Regulation of the professions

"Admission to the practice of the professions (licensing) and regulation of such practice shall be supervised by the board of regents (section sixty-five hundred six) and administered by the education department (section sixty-five hundred seven), assisted by a state board for each profession (section sixty-five hundred eight)."

McKinney's Consolidated Laws of New York. — Education Law

Section 6521. Definition of practice of medicine

"The practice of the profession of medicine is defined as diagnosing, treating, operating or prescribing for any human disease, pain, injury, deformity or physical condition."

Section 6522. Practice of medicine and use of title "physician"

"Only a person licensed or otherwise authorized under this article shall practice medicine or use the title 'physician'."

Section 6523. State board for medicine

"A state board for medicine shall be appointed by the board of regents on recommendation of the commissioner for the purpose of assisting the board of regents and the department on matters of professional licensing and professional conduct in accordance with section sixty-five hundred eight of this title. The board shall be composed of not less than twenty physicians licensed in this state for at least five years, two of whom shall be doctors of osteopathy. An executive secretary to the board shall be appointed by the board of regents on recommendation of the commissioner and shall be a physician licensed in this state."

Section 6524. Requirements for a professional license

"To qualify for a license as a physician, an applicant shall fulfill the following requirements:

(1) Application: file an application with the department;
(2) Education: have received an education, including a degree of doctor of medicine, 'M.D.', or doctor of osteopathy, 'D.O.', or equivalent degree in accordance with the commissioner's regulations;
(3) Experience: have experience satisfactory to the board and in accordance with the commissioner's regulations;
(4) Examination: pass an examination satisfactory to the board and in accordance with the commissioner's regulations;
(5) Age: be at least twenty-one years of age;
(6) Citizenship: be a United States citizen, or file a declaration of intention to become a citizen, unless such requirement is waived, in accordance with the commissioner's regulations;
(7) Character: be of good moral character as determined by the department; and
(8) Fees: pay a fee to the department for admission to the examination and for initial license of forty dollars, for each reexamination fifteen dollars, and for each biennial registration fifteen dollars."

McKinney's Consolidated Laws of New York. Article 3—Solemnization, Etc. of Marriage

Section 13. Marriage licenses

"It shall be necessary for all persons intended to be married in New York state to obtain a marriage license from a town or city clerk in New York state and to deliver said license, within sixty days, to the clergyman or magistrate who is to officiate before the marriage ceremony may be performed. In case of a marriage contracted pursuant to subdivision four of section eleven

of this chapter, such license shall be delivered to the judge of the court of record before whom the acknowledgment is to be taken. If either party to the marriage resides upon an island located not less than twenty-five miles from the office or residence of the town clerk of the town of which such island is a part, and if such office or residence is not on such island such license may be obtained from any justice of the peace residing on such island, and such justice, in respect to powers and duties relating to marriage licenses, shall be subject to the provisions of this article governing town clerks and shall file all statements or affidavits received by him while acting under the provisions of this section with the town clerk of such town."

United States Code Annotated - Title 42 - Wire or Radio Communication

Section 151. Purposes of chapter; Federal Communications Commission created

"For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, for the purpose of promoting safety of life and property through the use of wire and radio communication, and for the purpose of securing a more effective execution of this policy by centralizing authority heretofore granted by law to several agencies and by granting additional authority with respect to interstate and foreign commerce in wire and radio communication, there is created a commission to be known as the 'Federal Communications Commission', which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this chapter."

Section 301. License for radio communication or transmission of energy

"It is the purpose of this chapter, among other things, to maintain the control of the United States over all the channels of interstate and foreign radio transmission; and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed to create any right, beyond the terms, conditions, and periods of the license. No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio (a) from one place in any Territory or possession of the United States or in the District of Columbia to another place in the same Territory, possession, or District; for (b) from any State, Territory, or possession of the United States, or from the District of Columbia to any State, Territory, or possession of the United States; or (c) from any place in any State,

Territory, or possession of the United States, or in the District of Columbia, to any place in any foreign country or to any vessel; or (d) within any State when the effects of such use extend beyond the borders of said State, or when interference is caused by such use or operation with the transmission of such energy, communications, or signals from within said State to any place beyond its borders, or from any place beyond its borders, to any place within said State, or with the transmission or reception of such energy, communications, or signals from and/or to places beyond the borders of said State; or (e) upon any vessel or aircraft of the United States; (f) upon any other mobile stations within the jurisdiction of the United States, except under and in accordance with this chapter and with a license in that behalf granted under the provisions of this chapter."

Section 307. Licenses; allocation of facilities; terms; renewals

"(a) The Commission, if public convenience, interest, or necessity will be served thereby, subject to the limitations of this chapter, shall grant to any applicant therefor a station license provided by this chapter. ...

"(d) No license granted for the operation of a broadcasting station shall be for a longer term than three years and no license so granted for any other class of station shall be for a longer term than five years, and any license granted may be revoked as hereinafter provided. ..."

UNDERSTANDING IV

LAW IS THE ONLY MEANS OF PROVIDING FOR SOCIAL BENEFITS THROUGH PUBLIC ACTION.

A. *Explanation of Understanding IV*

Organizational function of law is also used to provide benefits for the society. Such benefits may be provided publicly or privately. When a society decides to provide a social benefit through public means, the role of law becomes *the dominant rule*. Public programs to provide public benefits cannot exist without law.

B. *Teaching Understanding IV*

OBJECTIVES

- Using a community problem as a case study, the student can collect evidence which would indicate that public action defined by law is necessary for solution, and can formulate a list of reasons for such action based on the evidence collected.
- Given several historic cases related to use of public funds for a social benefit, the student can identify the points of disagreement that required legal definition, and can predict several outcomes of the decision.

QUESTIONS TO REACH UNDERSTANDING

- Why is law necessary to provide social benefits through public action?
- Why are certain social benefits frequently provided through public rather than private action?

Module 1

DETAILED DESCRIPTION OF STRATEGIES

(a) Divide the class into several groups. Provide each group with a duplicate of the following questions. Instruct each group to study the question, discuss possible answers, and formulate a set of responses.

- What are a number of functions performed through public planning? (Examples include national defense, public works projects, education, etc.)
- What are some of the general characteristics of those functions usually peformed through public planning?
- Why are such functions usually performed through public planning?
- What would be the advantages and disadvantages in having such functions fulfulled through private action?

Using the questions below, team #1 may address itself to question 1 and will attempt to gather information for formulating an answer. This team will search local newspapers and other periodicals for articles on such matters as financial problems of local school districts and the failure of local school bond issues. An interview with appropriate school system personnel, including a member of the Board of Education, is another relevant source of information. The basic issue for this

DISCUSSION OF STRATEGIES AND RESOURCES

A group-on-group technique is suggested for the introduction to this understanding as well as the conclusion of the case study. However, the teacher may choose to employ a single large group session for the introduction as a change of pace if much small group work has been done with the previous understandings.

Although the use of law as a necessary means to provide social benefits through public action should be the focus of the understanding, the most interesting discussions will frequently center around questions of how best to provide such necessary social benefits through public action. As long as the teacher frequently draws the discussion back to the focus of the understanding, such discussions will only serve to emphasize the central importance of the role of law to public provision of social benefits.

In this phase of the strategies directed toward Understanding IV, the students are to be involved in an indepth examination of one specific instance of social planning. Because of its relevance to the local scene, education is selected here as the illustrative case and the strategy geared to it. The teacher may choose to develop another case study related to some other instance of public planning for social benefits by means of law.

A fundamental question for students to keep in mind is: Is law necessary to public action for social benefits—in this case education?

DETAILED DESCRIPTION OF STRATEGIES

team is the role of law in answering this question: How much should be collected, in order to provide adequate service?

Team #2 will be concerned with question 2, and developing an answer to it. Members of this team will interview appropriate school personnel, local officials, and concerned members of the community regarding local conflict and differences of opinion over assessment. Some members of this team might study "Property Tax is Obsolete," *Saturday Review*, Nov. 20, 1971, pp. 77-95. The basic change for this team is the role of law in answering the question: How and from whom shall the necessary funds be obtained?

Team #3 will be concerned with questions 3 and 4 and the answers to them. This team will obtain information from newspapers, periodicals, and interviews with knowledgeable persons regarding conflict over benefit distribution. This team can also study, compare, and report on Plessy v. Ferguson and Brown v. Board of Education. (Sources for these landmark Supreme Court decisions are given in the resource section.) The basic consideration for this team is the role of law in answering these questions:

1. In what way does law help in deciding how much money to collect for the support of a public benefit (education)?

DISCUSSION OF STRATEGIES AND RESOURCES

Because of the complexity of matters in building toward the final understanding, periodic clarification and summarizing may be essential. Teacher assistance in organizing team findings, developing conclusions, and facilitating the exchange of ideas may be necessary, but students should do as much on their own as possible.

DETAILED DESCRIPTION OF STRATEGIES

DISCUSSION OF STRATEGIES AND RESOURCES

2. In what way does law help in deciding how to collect money needed to support a public benefit (education)?
3. In what way does law help in deciding to whom to distribute a public benefit (education)?
4. In what way does law help in deciding how to divide the public benefit (education) among those receiving it?

RESOURCES

Plessy v. Ferguson, 163 U.S. Reports, 537 (1897)

An edited version of this decision is contained in:

Commager, H.S., ed. *Documents of American history*, 8th ed. New York. Appleton-Century-Crofts. 1968. Vol. I, Doc. No. 343, pp. 628-630.

James, L.F. *The Supreme Court in American life.* Fair Lawn, N.J. Scott, Foresman and Company. 1964. pp. 131-132.

Mill, E.W. *Liberty and law: readings in American government.* Morristown, N.J. Silver Burdett Company. 1971. pp. 161-173.

Oliver, Donald & Newman, Fred, eds. *Race and education.* Columbus. AEP Unit Books. 1969. pp. 10-25.

Swisher, C.B. *Historic decisions of the Supreme Court.* Princeton. Van Nostrand Company. 1969. pp. 98-101.

Tresolini, Rocco. *Constitutional decisions in American government.* New York. Macmillan Co. 1965. pp. 162-166.

____. *These liberties: case studies in civil rights.* New York. Lippincott Company. 1968. pp. 101-107.

Brown v. Board of Education, 347 U.S. Reports, 483 (1954)

An edited version of this decision is contained in:

Commager, H.S., ed. *Documents of American history*, 8th ed. New York. Appleton-Century-Crofts. 1968. Vol. II, Doc. No. 612, pp. 605-608.

James, L.F. *The Supreme Court in American life.* Fair Lawn, N.J. Scott, Foresman and Company. 1964. pp. 133-138.

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Starr, Isidore, Todd, L.P., & Curti, Merle. *Living American documents.* New York. 1961. pp. 340-344.

Swisher, C.B. *Historic decisions of the Supreme Court.* Princeton, N.J. Van Nostrand Company. 1969. pp. 169-174.

Tresolini, Rocco. *Constitutional decisions in American government.* New York. Macmillan Company. 1965. pp. 166-170.

____. *These liberties: case studies in civil rights.* New York. Lippincott Company. 1968. pp. 107-114.

Module 1

"Financing Schools: Property Tax is Obsolete." *Saturday Review*. November 20, 1971.

This set of articles centers on the Serrano v. Priest case in which the California Supreme Court passed on the constitutionality of the public school financing system of that state with its substantial dependence on local property taxes.

Howe, Harold, "Anatomy of a Revolution," pp. 84-88, 95.
Wise, A.E., "The California Doctrine," pp. 78-83.
Witkowsky, Jack, "Education of a School Board Member," pp. 90-92.

UNDERSTANDING V

LAWS SERVES AS A NECESSARY MEANS OF SUPPORT FOR PROVIDING FOR SOCIAL BENEFITS THROUGH PRIVATE ACTION.

A. *Explanation of Understanding V*

There is little question about the need for law to provide public benefits. This understanding deals with *the supportive role* of law in maintaining arrangements for the private provision of social benefits.

B. *Teaching Understanding V*

OBJECTIVES

- Using a list of social benefits obtained through private action, the student can classify the degree to which public provision of each benefit would be necessary as circumstances change from the status quo.
- In a discussion of the advantages of private versus public provision of a social benefit, the student can identify the reasons for the position taken by each discussant.
- The student can list several important reasons for legal provision endorsing private action in providing specific social benefits.

QUESTIONS TO REACH UNDERSTANDING

- What is the function of law if social benefits are provided through private action?
- How does the decision of a society to provide social benefits through public or private action affect the use of law in that society?

Module 1

DETAILED DESCRIPTION OF STRATEGIES

(a) By means of a brief question-and-answer session with the entire class, have students clarify their understandings of the differences between a private act and a public act. Then have the class compile a list of private acts (not required by law) which benefit either an individual or society. Some social benefits through private action with specific examples that appear on a list are indicated below:

- Employment -- providing work for the head of a family and for all who wish to work
- Sales -- selling a home to a family
- Marriages -- starting a new family
- Giving away possessions (wills) -- leaving an estate to a charitable organization
- Loans -- loaning money for home improvement
- Insurance -- providing protection against the loss of the breadwinner's income
- Education -- providing private schools and colleges

Other examples may originate with the students.

Have students examine the list while attempting to answer these questions:

DISCUSSION OF STRATEGIES AND RESOURCES

Students should recognize the supportive function of law in the private provision of social benefits. Law is primarily necessary if the private arrangement is unsuccessful, although the presence of legal backing may insure that more private arrangements are fulfilled.

The continuum analysis may prove useful in discussing not only the specific case selected but in making more general statements about the differences between societies that rely more on private initiative and societies that rely more on state control. The continuum drawn below has proven an extremely useful analytical tool in the classroom.

PRIVATE PROVISION OF SOCIAL BENEFIT			PUBLIC PROVISION OF SOCIAL BENEFIT

- Does law play any part in these private arrangements?
- Is law necessary to support such private arrangements?

These questions need not be thoroughly answered at this point.

(b) One of the above examples of social benefit through private actions may be selected as the basis for a more detailed examination. The aim is to answer more completely the question of the necessity of law in supporting such private arrangements. Education has been selected here for purposes of illustration. Accompanying documentation and information on source material for this strategy are provided in the resource section.

Provide each student with a copy or paraphrase of each of these six documents:

- Massachusetts School Law of 1642
- " " " " 1647
- " High School Law of 1827
- " Compulsory School Act of 1852
- New York State Constitution, Article XI
- New York Education Law, Section 801

DETAILED DESCRIPTION OF STRATEGIES

Divide the class into several groups for the purpose of examining the above documents with a view to determining the role of law in private education. Each group should analyze and discuss the assigned documents and then locate the act on a continuum similar to the one on page 50.

A general class session can be used to bring together observations on the six documents. The continuums can be drawn on the board or reproduced as transparencies.

(c) With reference to the continuum, discuss the advantages and disadvantages of planning through private action in contrast to planning through public action. Use the following as focal points for discussion:

- Equality of distribution of benefit offered
- Quality of benefit offered
- Cost of benefit offered

(d) Organize a debate on the following topic: "Resolved: Private schools in this community provide better quality education than the tax supported public schools."

(e) Have groups of students improvise brief dramatic presentations or skits depicting situations which might occur if private arrangements were not considered legal contracts enforceable in court. For example, what problems might arise if

DISCUSSION OF STRATEGIES AND RESOURCES

In the course of the discussion, students should develop understanding that specific legal functions:

- permit the functioning of private schools
- enable children to attend private schools without being considered truant by public school officials
- provide for certain curriculum controls for private as well as public schools

Examples of questions related to the accompanying case study in education that are directed toward the above issues might include the following:

- What would be an advantage of providing for all education through public planning? Through private planning?
- What proportion of those now in school would benefit if all education was provided through private planning?
- What factors help shape a person's opinion that a private school provides better quality education?
- Would providing for all schooling through private planning cost less? Explain.

attendance at private schools was not recognized as valid by public school authority? What could happen if a will did not have legal sanction? What would result if sales contracts were not legally binding? Although skits dealing with these matters may be humorous, they will nevertheless underscore the necessary supporting role of law in providing for social benefits through private actions.

(f) Have some students read and report back to the class on the provision of public benefits through the use of performance contracts with private companies. See "Learning C.O.D. Can the Schools Buy Success?" *Saturday Review*, September 18, 1971.

DISCUSSION OF STRATEGIES AND RESOURCES

The following are suggested as thought questions for summary discussion:

- What are some of the reasons why different societies choose to provide differing amounts of social benefits through public rather than private actions?
- Is the United States moving in the direction of providing more or less social benefits through public means? Explain.

The use of the continuum will be helpful in discussing the answers to these questions.

RESOURCES

Massachusetts School Law of 1642 (The "General Court" which formed the government of the colony felt that all children should have the opportunity "to read and understand the principles of religion and the capital laws of this country and to be usefully employed." The "General Court" was therefore willing to provide this opportunity through public means for those children whose parents did not provide it. Children were not required to go to school by law.)

Massachusetts School Law of 1647 (When the township increased to 50 householders, a schoolmaster was to be appointed "to teach all such children as shall resort to him to write and read, whose wages shall be paid either by the parents or masters of such children, or by the inhabitants in general." The majority of voters in the township could therefore decide to pay for schooling privately or publicly.)

Above two acts quoted in Commager, Henry Steele, *Documents of American History*, Appleton-Century Crofts, pp. 28-29, and in Starr, Todd, and Curti, Living American Documents 12-14.

Massachusetts High School Act 1827 (Public high schools were to be established in towns with 50 or more families.)

Massachusetts Compulsory School Law 1852 (Children had to be sent to school for 12 weeks unless they could not attend for reasons of physical or mental disability or poverty or they had "already acquired those branches of learning which are taught in the common schools.")

Above two acts quoted in Commager, Henry Steele, *The Era of Reform* 1830-1860, Van Nostrand (1960), pp. 126, 136, 137.

New York State Constitution, Article XI, Section 1 ("The legislature shall provide for maintenance and support of a system of free common schools wherein all the children of this state may be educated.")

New York State Education Law
McKinney's Consolidated Laws of New York, vol. 16 "Education Law" section 801

Note: Every principal and chief school officer should have Vol. 16, sections 1, 2, and 3 in his office. Teachers and students will find paragraphs 1, 2, 3, and 4 useful when reading this understanding.

American Civilization in Historic Perspective — Part II: Education. The State Education Department, Bureau of Secondary Curriculum Development. Albany.

Relevant section on "The School as an Institution of Society," pp. 1-10. See strategy on p. 11 for additional ideas on the use of continuums.

Mechlenburger, James A. and Wilson, John A. "Learning C.O.D. Can the Schools Buy Success?" *Saturday Review*, September 18, 1971, pp. 62-65, 76 ff.

This article explores the use of public funds for the provision of public benefits through the use of performance contracts with private companies.

UNDERSTANDING VI

PHILOSOPHICAL DIFFERENCES ABOUT THE NATURE OF MAN AND OF HIS SOCIETY INFLUENCE THEORETICAL BELIEF IN THE NECESSITY FOR LAW.

A. *Explanation of Understanding VI*

In this module, we have considered whether law plays a necessary role in providing for social control, for social guidance, and for social benefits through private and public action. Although we may have drawn a reasonable case for the practical necessity for law in a complex society, the theoretical necessity for formal law is a source of philosophic dispute. This understanding considers how one's philosophic view of man and of society affects one's view on the necessity of formal law.

B. *Teaching Understanding VI*

OBJECTIVES

- Given a statement concerning the need for law, the student can describe the author's position concerning the nature of man and of society.
- Given a real-life or hypothetical case imposing an ethical decision, the student can list the various ways that law can provide guidance in making such a judgment.

QUESTIONS TO REACH UNDERSTANDING

- How do philosophic differences about the nature of man affect theoretical belief in the necessity of law?
- How do philosophic differences about the nature of society affect theoretical belief in the necessity of law?

DETAILED DESCRIPTION OF STRATEGIES

(a) Divide the class into several small groups. Provide each group with an excerpt from one or another philosophical work. Some excerpts should be from philosophical writings which suggest the need for a legal system; others should support the point of view that there is no need for law. Two contrasting views are provided in the excerpts contained in the resource section. The quotation from Thomas Hobbes' *Leviathan* illustrates one extreme among conceptions of the nature of man and society. The excerpt from Peter Kropotkin's *Modern Science and Anarchism* illustrates the opposite extreme. The teacher should consider adding other excerpts from the works of other philosophers. Half of the groups should have a quotation reflecting a point of view similar to that of Hobbes with regard to the need for law; the other half of the groups should have an excerpt reflecting a perspective similar to that of Kropotkin. Questions to be kept in mind by members of each group in analyzing a given quotation are:

- What is the philosopher's view of the nature of man?
- What is his view of society?
- How will these views affect his belief in the necessity of law?

DISCUSSION OF STRATEGIES AND RESOURCES

The theoretical section of this module has been placed in the final understanding so students will have some knowledge of the nature of law before philosophizing about the necessity for it. Some students will want to dispose of this understanding quickly, usually because they believe strongly in the need for a legal system. Others will linger over the complex problem of whether the functions now performed by a legal system can be performed without law. Often such students will have to accept a more simple society to attempt to hold such an anarchistic view. Be certain that students supporting the position that law is not necessary are not merely replacing our present legal system with one of their own design. Although most students will accept the need for law, students should reach individual conclusions to the questions posed in this understanding.

Any society (grouping of people) encourages people to follow the rules (agreed-upon ways of behaving and doing things) by means of *force* (physical, mental, regulation of privileges, etc.) or *trust* (relying on one individual's goodwill, using persuasion, etc.). In practice, force and trust may be mixed together.

The objective is for students to realize that philosophical differences about such basic matters as the nature of man have an affect on the theoretical belief in the need for a legal system. One's conception of what man is colors, in other words, one's belief in the need for law.

(b) Have each student, possibly as a homework assignment, read a second excerpt with a philosophical point of view that contrasts with the one examined by his group. The student should review the same questions with regard to the thinking of a second philosopher. The student can then draw comparisons between the thinking of the first philosopher, as analyzed by his group, and that of the second philosopher, as analyzed by himself.

(c) Again, divide the class into small groups. Have each group consider whether the selected philosophers took into account the following functions of law (as developed in Understandings I through V) and what they may have thought about them.

- Social control function of law
- Social guidance function of law
- Social benefit function of law

Each group should also decide whether law is needed:

- If man is basically good by nature
- If man is basically evil by nature
- In a complex industrial society
- In a simple preindustrial society

These small group deliberations, especially on the necessity of law, also lend themselves to a fishbowl culmination.

DETAILED DESCRIPTION OF STRATEGIES

(d) Stage a debate on a topic such as "Resolved: We would be better off in our society without the present legal system." Students who think that the functions of the system can be performed without the system will settle with those who are already convinced of the need for the system and vice versa.

(e) Have interested students do research on the life and times of the philosophers from whose writings the excerpts were taken. Matters of interest and relevance can be reported back to the rest of the class.

- Does knowledge of the personal circumstances of the man and the era in which he lived shed light on his thinking about the need for law?

(f) Have students consider their answers to these questions:

- What do you think life would be like if Hobbes were essentially correct about nature, man, and society?
- What do you think life would be like if Kropotkin were essentially correct?

Give groups of students a few minutes to improvise skits illustrating their answers to these questions. Do not discourage them from being imaginative, fanciful, and "far-out."

DISCUSSION OF STRATEGIES AND RESOURCES

Student speculation on the philosophers' various theoretical beliefs in the need for law as well as individual and class thinking on the matter can be graphically represented on continuums similar to the one below.

These particular continuums can be marked on transparencies (one can be used as an overlay for the other) and comparisons made.

- How close is the class to a consensus?
- What factors account for the individual points of view?

* *

MAN IS GOOD ——— MAN IS EVIL

LAW IS UNNECESSARY ——— LAW IS NECESSARY

Some students may wish to locate other relevant philosophical views of man, society, and the need for law. A useful tool for this would be *Great Books of the Western World*, 54 vols., Ed. Robert M. Hutchins, Chicago, William Benton, 1952. The "Syntopicon" which is part of the set can be used to trace significant ideas through the works of the included writers.

- Students may find the articles and game listed on page 63 useful as additional ways of analyzing the relationship between philosophical outlook and regard for law.

DETAILED DESCRIPTION OF STRATEGIES

Using one accompanying diagram you can analyze and compare the force-trust "mix" of different societies. The trust element can be rated on a 0-5 scale in which 0 means absolutely no trust and 5 means complete trust. Similarly with the force element, 0 means no force while 5 means absolute physical and mental force. Any society where the two are equally mixed will fall along the heavy diagonal line. Those above the line tend to rely on trust, those below the line on force. Plot societies by placing dots on the grid. (See p. 63.)

Have students working in pairs plot these and other societies:

- School
- A ghetto
- A prison
- One's church
- One's family
- One's group of friends
- "Social" class
- One's club or youth group
- A youth gang
- The U.S.A.
- A hippie commune
- A Krishna Consciousness group
- The army
- A communist society

Related discussion questions include:

- What are some sources of authority?
- When is authority most legitimate?

DISCUSSION OF STRATEGIES AND RESOURCES

RESOURCES*

Summers, R.S., Campbell, A.B., & Hubbard, G.F. *American legal system.* Unit I - "Society's need for law." Lexington, Mass. Ginn & Co. 1973.

Hobbes, Thomas. *Leviathan.* London: J. M. Dent & Sons Ltd.; New York: E. P. Dutton & Co., Inc. (1937) pp. 63-66.

"So that in the nature of man, we find three principal causes of quarrel. First, Competition; second, diffidence; thirdly, glory. . . .

"Hereby it is manifest, that during the time men live *without a common power to keep them all in awe*, (a legal system), they are in that condition which is called war; and such a war, as is of every man, against every man. . . .

"Whatsoever therefore is consequent to a time of war, where every man is enemy to every man; the same is consequent to the time, wherein men live without other security than what their own strength, and their own invention shall furnish them withal. In such condition, there is no place for industry; because the fruit thereof is uncertain; and consequently no culture of the earth; no navigation, nor use of the commodities that may be imported by sea; no commodious building; no instruments of moving, and removing, such things as require much force; no knowledge of the face of the earth; no account of time; no arts; no letters; no society; and which is worst of all continual fear, and danger of violent death; and the life of man, solitary, poor, nasty, brutish, and short." (Spelling and capitalization modernized.)

Kropotkin, Peter. *Modern Science and Anarchism.*

"The anarchists conceive a society in which all the mutual relations of its members are regulated, not by laws, not by authorities, whether self-imposed or elected, but by mutual agreements between the members of that society, and by a sum of social customs and habits — not petrified by law, routine, or superstition, but continually developing and continually readjusting, in accordance with the ever-growing requirements of a free life, stimulated by the progress of science, invention, and the steady growth of higher ideals. No ruling authorities, then; no government of man by man; no crystallization and immobility, but a continual evolution — such as we see in Nature."

Barker, Sir Ernest, ed. *Social Contract: Essays by Locke, Hume, and Rousseau.* New York: Oxford University Press, 1962. (307 pp., paperback)

Source of additional excerpts of philosophical views on the nature of man and society.

*Direct quotations from statutes are indicated by the use of quotation marks. Other statements are summaries or paraphrases of the statute listed.

Module 1

Fuller, Lon. L. "The Case of the Speluncean Explorers," *Harvard Law Review*, vol. 62, 1948-1949, pp. 616-645.

Detailed account of the hypothetical case of the trapped "spelunkers" who resorted to cannibalism.

"The Case of the Speluncean Explorers," *Harvard Law Review*, vol. 62, pp. 616-645 for the original and much more detailed imaginative treatment of the situation of a group of people trapped in a cave who resort to cannibalism. Many students will enjoy reading and discussing the complete article which will provide the raw material for a mock trial. Those who engaged in the act of cannibalism can be tried to determine if they are guilty of murder. Students can decide who will play what roles and how the trial will be structured. A jury can hear evidence and render a decision. It is suggested that the process itself be the subject to analysis in a subsequent debriefing session. The situation generates fundamental questions and underscores the fact that complex problems are of necessity "resolved" in the hands of ordinary people.

Gibson, William M. *Lessons in Conflict: Legal Education Materials for Secondary Schools*. 178 pp. Available for $2.00 from the office of John Gibson, Director, Lincoln Filene Center, Tufts University, Medford, Mass.

"Introductory Hypothetical" in William M. Gibson, *Lessons in Conflict: Legal Education Materials for Secondary Schools*. This introductory hypothetical case involves three students who find themselves trapped in a cave. One student is athletic, the second is "brainy," and the third is quiet and "straight." They agree to draw lots, with the loser to be eaten by the other two. The quiet boy who suggested the scheme attempts to back out when he becomes the loser. The others claim that a deal is a deal and pick up rocks. . . .

Discussion of the anecdote gets at basic understandings of the nature of man, society, and law.

Hutchins, Robert M., ed. *Great Books of One Western World*, 54 vols., William Benton, 1952.

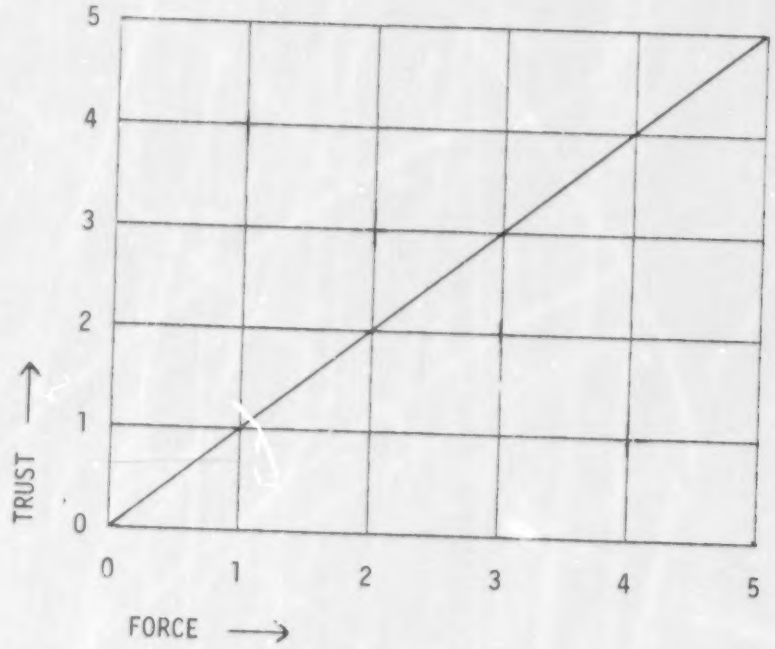
Useful source of excerpts for differing points of view. The nature of man and society. The accompanying *Syntopicon* makes it easy to trace ideas through all volumes of the set.

See the following magazine articles and simulation:

"Cannibalism on the Cordillera," *Time Magazine*, January 28, 1973, pp. 27-28.

Account of plane crash survivors in the Andes Mountains surviving by resorting to eating the bodies of crash victims. Situation poses interesting moral and legal questions.

Lincoln-Filene Center: Game, "The Airraid Shelter."



See page 60 for use of this diagram.